JUN 30 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1969

No. 302

PAUL BROWN MAYNARD,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. _____

PAUL BROWN MAYNARD,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Central District of California, convicting the petitioner for a violation of the Universal Training and Service Act and sentencing him to the custody of the Attorney General.

1. OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals is not yet reported. It is set forth as Appendix A to this petition.

2. STATUTORY PROVISION SUSTAINING JURISDICTION

The judgment of the Court of Appeals was entered on March 28, 1969; Petition for Rehearing denied May 1, 1969. See Appendix B to this petition.[1]

The Petition for Writ of Certiorari is filed within the required thirty days times, as extended by Mr. Justice Douglas to and including June 30, 1969. See Appendix C to this petition.

The jurisdiction of this Court rests on Section 1254 (1) of the Judicial Code, 28 U.S.C. The District Court had jurisdiction under 18 U.S.C. § 3231.

3. QUESTIONS PRESENTED AND HOW RAISED

(1) The constitutional question raised by petitioner is whether petitioner was deprived of that guaranty of "due process of law" insured by the Fifth Amendment and which requires observance of those general rules established in our system of jurisprudence for the security of private rights in any proceeding which may result in depriving a person of life, liberty or property, when the standards used by the Department of Justice Hearing Officer for his Report and Recommendation and relied upon by the Selective Service System, were artificial, fictitious, and unlawful standards not authorized by the Act and the Selective Service System Regulations.

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1. This petitioner's Petition for Rehearing was denied by the Court of Appeals on May 1, 1969. See Appendix B of this petition.

Further, whether the standard established by the Court of Appeals, in petitioner's case concerning conscientious objector, is contrary to the 1st Amendment.

(2) The second question presented is whether a Selective Service System registrant, presenting a prima facie claim for a conscientious objector classification and being entitled to defend a prosecution for failure to submit to induction on the basis that he was misclassified was contrary to all evidence before the Selective Service System, given the prescribed protection.

These questions were raised at the trial and to the Court of Appeals and considered by it.

4. STATUTES AND REGULATIONS INVOLVED

Involved are the Fifth Amendment, the First Amendment, and § 456 (j) of the Universal Military Training and Service Act of 1951 as amended (50 U.S.C.A. App.). They are set forth in Appendix D.

5. STATEMENT OF THE CASE

The indictment charged petitioner with a violation of the Universal Military Training and Service Act for refusing to submit to induction [Tr. 2].[2]

Petitioner pleaded "not guilty" and was tried by the Honorable William P. Gray, District Judge, sitting alone without a jury. Petitioner was found guilty and sentenced to imprisonment for a period of three years [Tr. 28].

6. FACTS

The relevant facts in this appeal are found in (1) the Selective Service file [Ex. 1-122][3] and in (2) the report-

2. Tr. refers to the Transcript of Record.

3. Ex. refers to the Government Exhibit #1, the complete SSS file of Appellant.

er's transcript of the trial [RT 1-15],[4] both being parts of the designated record on appeal.

The appellant is one of Jehovah's Witnesses and at the earliest time in his Selective Service processing (his Classification Questionnaire, 1964) he claimed a conscientious objector classification [Ex. 10],

He also pointed out, at the same time and on the same page, that he was a minister of the Watchtower Bible and Tract Society.

When he filed the above questionnaire it was accompanied by a letter from the Presiding Minister of the congregation of missionaries with which appellant had been affiliated in the years 1953-1957 [Ex. 5]. This letter said "He at all times [1953-1957] manifested sincerity in his devotion to his Christian activiey." [sic].

At this time he also filed a letter from the Overseer of his current congregation of missionaries [Ex. 6]. This letter showed in some detail his ministry work and that it was regular.

The local board sent him a four page Special Form for Conscientious Objector. He filled it out in detail and filed it on April 14, 1964 [Ex. 17-21]. In it he showed he met all the requirements of the act and the regulations. Concurrently, he filed several more corroborative letters from fellow ministers [Ex. 21-24].

Nevertheless he was classified in Class I-A. When he neither asked for an Appearance Before the Board, or for an appeal the board called him in for an "interview". He explained he had heard it was futile.

When he was eventually sent an order to report for induction, and he refused to submit to induction [at the

4. RT refers to the reporter's transcript.

induction station he wrote the following statement, upon request of the induction officer]: "I refused to Jion the Army because. I have been raised as a Jehovah's Witness since I was 5 years old. And the bible says that God's Kingdom is no part of this world. I do not want to kill one of my brothers in war when we are supposte to be brothers in the faith." When the Director learned of the situation [files are sent him for review, before prosecution] he took an appeal for appellant [Ex. 41].

The administrative appellate proceedings, at that time, still included an inquiry by the F.B.I., a hearing by a Department of Justice Hearing Officer, an analysis of all up to that point by the Attorney General's conscientious objector section and a submission of the analysis, with a recommendation, to the State Appeal Board. The registrant was furnished a "resume" of the inquiry (for use at the Hearing) and a copy of the analysis and recommendation of the Attorney General, for a written rebuttal and the appeal board.

The inquiry resume is on pages 62-69 of the government's exhibit. The analysis-recommendation is on pages 57-61 of the same exhibit. The rebuttal of the registrant is on page 70.

1. The inquiry resume: in high school he "was rated satisfactory in cooperation and courtesy"; . . . "been the cause of disciplining problems in class." [Ex. 63]. A "teacher observed that the registrant had always appeared to be sincere and conscientious, and thus, he would be inclined to believe that if registrant claimed to be conscientiously opposed to serving in the military forces because of his religion, he would believe him." [Ex. 63-64].

2. The analysis-recommendation: the Hearing Officer "reported that the registrant [1] did not appear to

have a sound, firm understanding of his religion; [2] that the registrant's reaction to certain situations was opposite to that of a pacifist and his answers seemed to be inconsistent with pacifist views; [3] that the registrant referred only to the very basic tenets of his religion and [4] did not appear to have the knowledge of his religion that would enable him to be classified as a minister." [Ex. 59].

The recommendation was that there were inconsistencies and therefore that an adverse decision would have a basis in fact. The decision of the Appeal Board was adverse to the claim.

3. The rebuttal: the registrant pointed out (1) that the Hearing Officer asked him only two questions on the Bible and (2) that Jehovah's Witnesses are not pacifists. He gave details of his history to show the inaccuracy of the inquiry and analysis [Ex. 70].

7. REASONS FOR GRANTING A WRIT

Both questions presented are of an importance greater than one individual's fate. The questions are national ones because the reach of the Selective Service System is into every hamlet, the "calls" for induction show every indication of continuing, and the percentage of registrants professing conscientious objections to war is not decreasing, therefore numerically many persons are affected.

The constitutional point is of grave importance and the wide impact of the other point requires a national determination.

8. ARGUMENT

The argument is being divided into two parts:

(1) A prima facie case for a I-O classification was presented, and

(2) There exists a constitutional point.

(1) The Prima Facie Case

Petitioner presented to the Selective Service System a prima facie case for a I-O conscientious objector classification and he should have been so classified.

Section 6 (j) of Title 1 of the Universal Military Training and Service Act, as amended (50 U.S.C. App. 456 (j)), provides:

> "Nothing contained in this title . . . shall be construed to require that any person be subject to combatant training and service in the armed forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. . . ."

Section 1622.14 (A) of the Selective Service Regulations [32 C.F.R. 1622.14 (A)] provides:

> "1622.14 Class I-O: Conscientious Objector Available for Civilian Work, Contributing to the Maintenance of the National Health, Safety or Interest.—(A) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces."

The local board's duties and the courts' scope of review in draft cases were spelled out by this Court in *Dickinson* v. *United States*, 74 S. Ct. 152, 157, 158, 346 U.S. 389 (1953):

> "The task of the courts in cases such as this is to search the record for some affirmative evidence to support the local board's overt or implicit finding that a registrant has not painted a complete or accurate picture of his activities. . . . If the facts are disputed

the board bears the ultimate responsibility for resolving the conflict—the courts will not interfere. Nor will the courts apply the test of 'substantial evidence'. However, the courts may properly insist that there be some proof that is incompatible with the registrant's proof of exemption."

". . . when the uncontroverted evidence supporting the registrant's claim places him prima facie within the statutory exemption, dismissal of the claim solely on the basis of suspicion and speculation is both contrary to the spirit of the Act and foreign to our concepts of justice."

The dissenting opinion of Mr. Justice Jackson put the proposition more bluntly (74 S. Ct. 152, 159):

". . . Under today's decision, it is not sufficient that the board disbelieve the registrant. The board must find and record affirmative evidence that he has misrepresented his case. . . ."

In the present case, petitioner made out a prima facie case for a I-O classification when he filed with the local board his Form 150 in which he claimed conscientious objection to war in any form based upon religious training and belief.

The government's case (the appellant's Selective Service file placed in evidence as the government's exhibit) is totally barren of any evidence whatsoever tending to cast the slightest doubt on appellant's sincerity.

Petitioner claimed membership in the Watchtower Society as one of Jehovah's witnesses.

The Court may take judicial notice of the fact that although Jehovah's witnesses usually have trouble later in the administrative procedure, because of their claim to be ministers, they almost never have trouble getting a I-O classification. There is not a single shred of evidence in

the record to cast doubt on appellant's bona fide membership in Jehovah's witnesses and belief in their creed.

Thus the Selective Service System's denial of I-O classification to petitioner was without basis in fact and upholding that arbitrary classification would be contrary to the rule of law as set forth in *Dickinson*, or at least, its spirit.

(2) The Constitutional Point

" 'Due process' is a procedure which hears before it condemns, proceeds upon inquiry, and renders judgment only after trial [or fair hearing]". *Sexton* v. *Barry*, 223 F. 2d 220, certiorari denied 77 S. Ct. 94, 352 U. S. 870, 1 L. ed. 2d 76. Constitutional guaranty of "due process of law" requires observance of those general rules established in our system of jurisprudence for the security of private rights in any proceeding which may result in depriving a person of life, liberty or property. U.S.C.A., Const. Amend. 5; *U. S.* v. *Kuwabara*, 56 F. Supp. 716. The absolute fundamentals of "due process of law" are jurisdiction, adequate notice, and a fair hearing. U.S.C.A., Const. Amend. 5; *U. S.* v. *Parcels of Land in Prince George's County, Md.*, 40 F. Supp. 436. In regard to "due process," it should be pointed out that the constitutional provision for security of person and property should be liberally construed. U.S.C.A., Const. Amends. 4, 5; *U. S.* v. *Wheeler*, 149 F. Supp. 445.

With the above in mind, petitioner contends that he was deprived of that guaranty of "due process of law" insured to him by the Fifth Amendment and the general rules of our system of jurisprudence.

The Court of Appeal's decision rested entirely on the fact that the Department of Justice Hearing Officer concluded that petitioner "did not appear to have made a

serious study of his religion, and that his knowledge of it was superficial. Appellant devoted less than 10 hours per month to his religious activities after July 1965." (slip opinion].

Petitioner submits that the standards used by the Department of Justice Hearing Officer for his Report and Recommendation and relied upon by the Selective Service System and the Court of Appeals, were artificial, fictitious, unlawful standards not authorized by the Act and the Selective Service System Regulations, and deprived petitioner of guaranteed constitutional rights.

What credentials has this Hearing Officer to be considered as one familiar with religion, or the religion of this appellant, or with the standards required for conscientious objection? Does appointment to the position of Hearing Officer clothe him with a presumption of such knowledge? If such a presumption exists his statement and conclusions have rebutted it.

In regard to the situation before the Court, such standards, as established by the Department of Justice Hearing Officer, are untenable, without any support in precedent, with insufficient support in logic, and a violation of due process of law.

There is nothing in the Act, the Selective Service System Regulations, or the case law, that requires a conscientious objector to (1) make "a serious study of his religion", or (2) to have more than a "superficial" knowledge of his religion, or (3) to devote more than 10 hours a month to it. The Act, the Selective Service System Regulations and the case law require sincerity. The Department of Justice Hearing Officer is not empowered to establish unlawful standards but is empowered to report on the sincerity of registrant. *Simmons* v. *United States*, 348 U.S. 397, 99 L. ed. 453, 75 S. Ct. 397 (1955).

If petitioner *had* claimed the ministry classification it then *might* be said that his failure to put in more hours or, *if true*, to have a deep knowledge of religion (to meet the draft law standards on *ministry*) was an indication of an insincere person. Since he did not claim the IV-D classification the standard used by the Hearing Officer was imported and irrelevant and the Court of Appeals erred in adopting such a standard as applicable to petitioner.

The State Director saw that Maynard was only claiming the I-O, when he wrote the local board to reconsider (Ex. 25). The Director saw this when He, on His own initiative, took an appeal for Maynard (Ex. 45).

Assuming (1) that our application of "the insolence of office" concept to this Hearing Officer's factual judgment concerning a birthright Jehovah's witness is without a reasonable basis and that, (2) in fact, petitioner was *not a serious student of his religion* and did not have a profound knowledge of it and that he was slack in his religious activities "after July 1965"; where is there support, *in law*, for the use of such a standard?

There never before has been such a standard, but now there is: *Maynard* v. *United States*, 9 Cir., ... F.2d ..... decided March 28, 1969. Nowhere else. We submit that such a standard is contrary to constitutional guarantees.

The law has not heretofore required a Selective Service System registrant to be pious, or observant of his group's standards, or those of any denomination. Such a requirement is proper in the opinion of the Court below. This is directly contrary to the 1st Amendment.

As the Court of Appeals for the Ninth Circuit pointed out in *Chernekoff* v. *United States*, (9 Cir., 1955) 219 F. 2d 721 at page 724:

"Likewise in the course of argument it was represented and unchallenged that the derogatory information in the file as to appellant's religious sincerity concerns a single conviction for drunkenness and a later one for speeding. To be a good church member does not necessarily entail being a saint. A mortal may occasionally weaken and still remain loyal to the tenets of his faith. A conscientious objector is not to be considered an outcast susceptible of being convicted of a felony by any stray scintilla of evidence, indicating sporadic deviation from the principles and approved practices of his religion. We are all children of Eve."

A man could *even* be disfellowshipped, for non-observance, and still not fall short of the draft law standard for a conscientious objector if moral turpitude or insincerity was not involved.

It is significant that petitioner has never been disfellowshipped for his "laxity". The reason for his good standing, as one of Jehovah's witnesses, is that the hierarchy of the Watchtower Society fully realizes, because their ministry is an unpaid one, that by reason of periodic need [in this case *seeking* employment] each man in their missionary membership at one time or another, slackens his zeal so that he can pay off earthly debts.

The opinion relates that an overseer in the La Sierra Unit of Jehovah's Witnesses, interviewed concerning petitioner's activities, said that he was unable to assign any reason for appellant's inactivity other than negligence on petitioner's part. The fact that this man didn't know any *other* reason casts no doubt on petitioner's testimony as to why he slackened his religious activities and, even if it was "negligence" so what? See *Chernekoff,* supra.

Also, *Parr* v. *United States,* 9 Cir., 1959, 272 F. 2d 416, 420, especially footnote 1.

Such unlawful standards cannot be used in deciding whether petitioner or any man is a conscientious objector. Such standards violate the Act, the Selective Service Regulations, and the 1st and 5th Amendments to the Constitution of the United States.

CONCLUSION

For the above given reasons certiorari should be granted and the judgment should be reversed.

Respectfully

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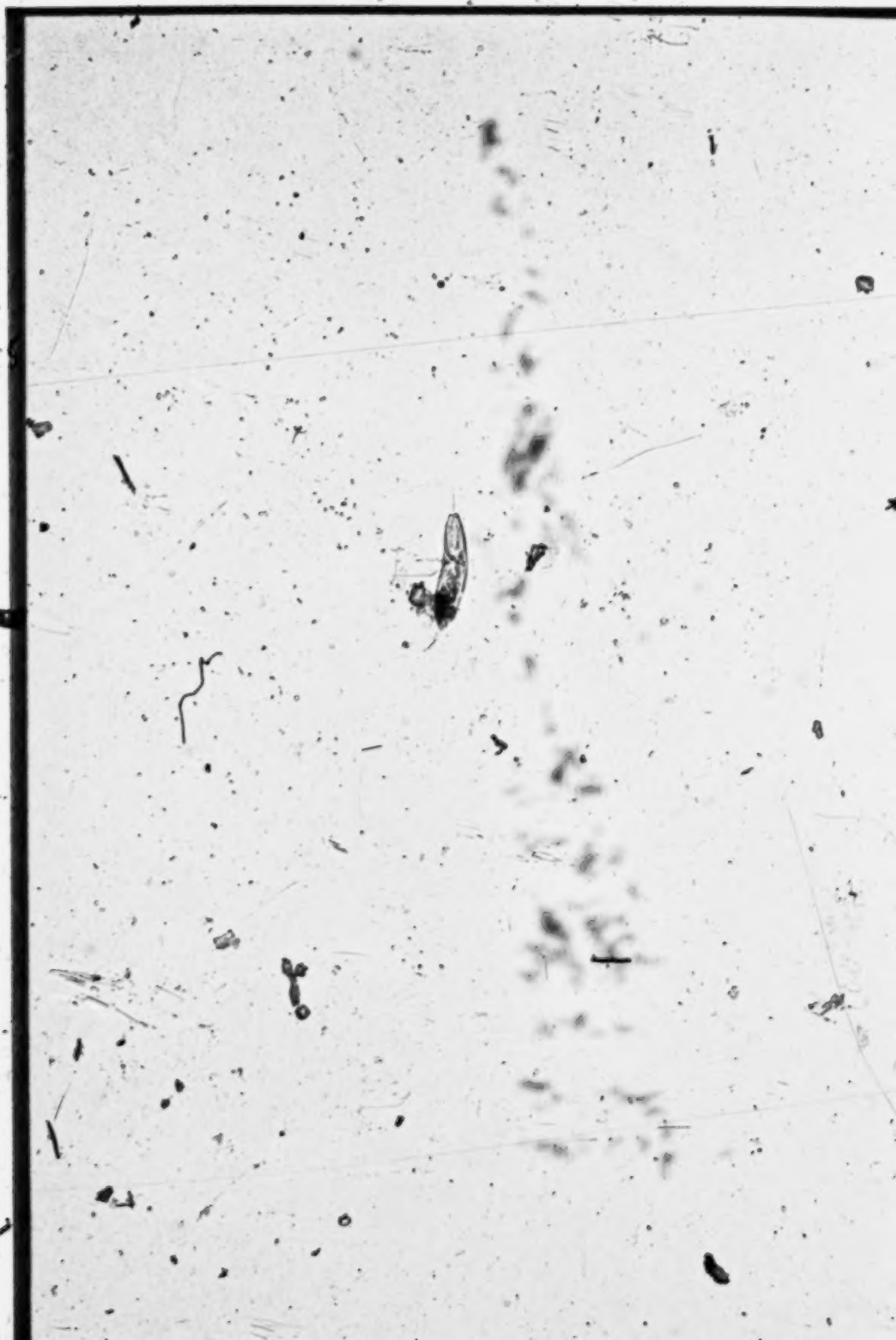
June 30, 1969.

APPENDIX



APPENDIX A

United States Court of Appeals

FOR THE NINTH CIRCUIT

PAUL BROWN MAYNARD,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

No. 22,887

[March 28, 1969]

Appeal from the United States District Court
for the Central District of California

Before: BARNES and CARTER, Circuit Judges, and VON DER HEYDT,* District Judge

VON DER HEYDT, District Judge:

Appellant, a Jehovah's Witness, was placed in Selective Service Class I-A by both his local Selective Service Board and an Appeal Board, despite his claim to be a conscientious objector. When called for service, he refused to be inducted. This led to his conviction under 50 U.S.C. App. §462 (Supp. III, 1968) and a sentence of three years imprisonment. He urges on appeal that there was no basis in fact for the Board's refusal to classify him as a conscientious objector, and therefore the conviction must be reversed.

The range of judicial review of the determinations of Selective Service Boards has been called "the narrowest

*The Honorable James A. von der Heydt, United States District Judge for the District of Alaska, sitting by designation.

known to the law." *Blalock* v. *United States*, 247 F.2d 615, 619 (4th Cir. 1957). The "basis in fact" which will support the Board's decisions need not even rise to the level of "substantial evidence." All that is required is that where the registrant has made out a prima facie case for exemption, there must be "some proof that is incompatible with the registrant's proof of exemption." *Dickinson* v. *United States*, 346 U.S. 389, 396 (1953).

The nature of such proof depends upon the nature of the prima facie case. In *Dickinson, supra*, the registrant claimed to be a "regular or duly ordained minister of religion", which claim he substantiated by evidence consisting of objective facts. In such cases there should be some evidence tending to refute the inference created by such facts, in order to warrant denial of the exemption.

In the instant case, as distinguished from *Dickinson*, Maynard claims to be a conscientious objector. The United States Supreme Court has stated:

> "Here the registrant cannot make out a prima facie case from objective facts alone, because the ultimate question in conscientious objector cases is the sincerity of the registrant in objecting, on religious grounds, to participation in war in any form. In these cases, objective facts are relevant only insofar as they help in determining the sincerity of the registrant in his claimed belief, purely a subjective question. In conscientious objector cases, therefore, any fact which casts doubt on the veracity of the registrant is relevant." *Witmer* v. *United States*, 348 U.S. 375, 381-82 (1955).

Since the statute exempts as conscientious objectors only those who are opposed to participation in war "by reason of religious training and belief," 50 U.S.C. App. §456(j) (Supp. III, 1968) any fact which casts doubt on the

sincerity of the registrant's religious convictions is likewise relevant.

Viewing the matter in this light, we hold there does exist a basis in fact for the Appeal Board's placement of Maynard in Class I-A. The Hearing Officer of the Department of Justice, who interviewed appellant, found that he did not appear to have made a serious study of his religion, and that his knowledge of it was superficial. Appellant devoted less than 10 hours per month to his religious activities after July 1965. He gave as his reason for this that he was required by financial necessities to devote more time to secular work. However, at the time of the hearing he had been unemployed for two or three weeks, but had not increased his religious activities. An overseer in the LaSierra Unit of Jehovah's Witnesses, interviewed concerning Maynard's activities, said that he was unable to assign any reason for appellant's inactivity other than negligence on Maynard's part. In addition, certain inconsistencies were discovered between Maynard's version of various events and those of other witnesses.

These facts, taken together, are more than sufficient to meet the minimal standard of "basis in fact."

The conviction is therefore affirmed.

APPENDIX B

United States Court of Appeals

FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Thursday,
May 1st, 1969

Before: BARNES and CARTER, Circuit Judges, and VON DER HEYDT, District Judge

Order Denying Petition for Rehearing

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant filed April 9th, 1969 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1968

PAUL BROWN MAYNARD,
Petitioner,

vs.

UNITED STATES.

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 30, 1969.

/s/ W. O. Douglas
Associate Justice of the Supreme Court of the United States

Dated this 2nd day of June, 1969.

APPENDIX D

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Universal Military Training and Service Act of 1951, As Amended (50 U.S.C.A. App. § 456 (j))

(j) Conscientious objectors.—Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period—equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice

for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.

SUPREME COURT, U.S.

FILED

JUL 30 1969

CLERK

No. 202

In the Supreme Court of the United States

OCTOBER TERM, 1969

PAUL BROWN MAYNARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 302

PAUL BROWN MAYNARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 409 F.2d 505.

JURISDICTION

The judgment of the court of appeals was entered on March 28, 1969 (Pet. App. A). A petition for a rehearing was denied on May 1, 1969 (Pet. App. B). Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to June 30, 1969 and the

petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was a basis in fact for the I-A (acceptable for duty) classification given to petitioner instead of the I-O (conscientious objector) classification which he sought.

STATEMENT

After a jury-waived trial in the United States District Court for the Central District of California petitioner was found guilty of refusal to obey an order of his local board to report for induction into the armed services, in violation of 50 U.S.C. App. (Supp. III) 462 (I R, 1-2). On March 19, 1968, he was sentenced to imprisonment for three years with eligibility for parole to be determined under 18 U.S.C. 4208(a)(2) (I R, 28). The court of appeals affirmed (Pet. App. A).

Petitioner's Selective Service file,[1] which was introduced as Government Exhibit 1 at the trial, shows that on July 31, 1961 petitioner, then age 18, registered with Local Board No. 136 at Riverside, California (F. 1-3). On March 11, 1964 petitioner submitted to the board his Classification Questionnaire in which he stated that he was earning $4.30 per hour for a 40-hour work week as a carpenter (F. 7, 9). In the Classification Questionnaire petitioner stated that

[1] We are lodging with the Clerk of this Court a copy of petitioner's Selective Service file to which we refer as "F".

he had been ordained a minister of the Jehovah's Witnesses on June 29, 1952 and that he was a student preparing for the ministry (F. 10). Petitioner also claimed to be a conscientious objector (F. 10).

On April 14, 1964, petitioner returned to the local board a completed Special Form for Conscientious Objectors in which he claimed exemption from both combatant and noncombatant training and service (F. 17-21). In this form he stated that he "must obey God rather than men" (F. 17); that he believed in the use of force only if he or a member of his family was attacked (F. 18); and that the basis of his belief derived from his status as a Jehovah's Witness (F. 20). Petitioner attached letters from three members of the Congregation, attesting to his sincerity. The basic tenor of these letters was that petitioner's sincerity derived from his status as a Jehovah's Witness and his activity in connection with his church. (F. 22-24). One letter stated, "He has regularly participated in the door to door ministry. On occasions putting in 85 hours per month as a minister" (F. 23). The local board by a 3-0 vote classified petitioner 1-A and he was so notified (F. 14). On June 17, 1964, petitioner was given a physical examination and found to be acceptable (F. 26).

On September 15, 1964 petitioner appeared as requested for an interview with the local board (F. 30, 31). When asked why he had not appealed his 1-A classification, he stated that he felt it would do no good. The chairman explained the work program and asked petitioner if he would take a job under that

program. Petitioner replied that he would not accept a 1-A-O classification, but that he would take a 1-O if he did not have to work. Petitioner stated that he felt working in a hospital with sick people would be aiding them to fight at a later date and would be a compromise (F. 31). The board then reviewed the file and refused to reopen petitioner's classification (F. 14).

On March 16, 1965 the local board forwarded petitioner's file to the California Headquarters of the Selective Service System for review (F. 14). The State Director replied that, since petitioner had claimed to be a conscientious objector, the local board should consider the information in the file and reclassify him so that he might exercise his right of appeal (F. 35). On March 26, 1965 petitioner was advised that his file would again be presented to the local board on April 13, 1965, and that if he wished to submit any additional written information regarding his status, he should do so immediately (F. 36). No further information was submitted. On April 13, 1965 the local board by a 3-0 vote again classified petitioner 1-A and he was so notified (F. 14). Petitioner again failed to appeal his 1-A classification (F. 37, 38).

On May 20, 1965, petitioner was ordered to report for induction on June 8, 1965 (F. 14, 39). Petitioner reported as ordered but refused to be inducted.

On June 17, 1965 petitioner's file was again sent to the California Selective Service Headquarters (F. 14). On July 13, 1965, the State Director sent petitioner's file back to the local board, together with a notice of appeal by the Director of Selective Service to the ap-

peal board (F. 44, 45). On July 22, 1965 the appeal board tentatively determined by a 3-0 vote that petitioner should not be classified 1-O (F. 14). On July 26, 1965 the file was sent to the United States Attorney for the purpose of obtaining an advisory recommendation of the Department of Justice (F. 46).

Petitioner was given an opportunity to be heard on his conscientious objector claim by a hearing officer for the Department of Justice, on April 22, 1966 (F. 57, 58). The report of the Department of Justice, received by the appeal board on January 31, 1967, read, in part, as follows (F. 58-61):

> The registrant appeared before the Hearing Officer at Santa Ana, California on April 22, 1966 accompanied by his father. The registrant acknowledged having received a copy of the resume.[2] * * * The Hearing Officer questioned the registrant about the religious basis of his conscientious objector claim and reported that the registrant did not appear to have a sound, firm understanding of his religion; that the registrant's answers to questions indicated that the registrant's reaction to certain situations was opposite to that of the pacifist and his answers seemed to be inconsistent with pacifist views; that the registrant referred only to the very basic tenets of his religion and did not appear to have the knowledge of his religion that would enable him to be classified as a minister. The registrant stated that since July 1965, he has been devoting less than ten hours a month to his religious work

[2] This resume is contained in the Selective Service file, F. 62-70.

but maintained that he was financially unable to put in more time than that. The Hearing Officer reported that the registrant admitted that he had not been employed for the last two or three weeks before the hearing, and that he had been receiving unemployment insurance compensation and there was no indication that he was devoting more time to his religious activities. The Hearing Officer reported that the registrant admitted that he owned a 1962 Tempest automobile, upon which he is making payments; that he has borrowed quite a sum of money and that his time was taken up with the payment of his debts. The Hearing Officer concluded that the registrant's explanation of his failure to spend more time in his religion is unsatisfactory, illogical and showed a lack of religious fervor; that it did not appear that the registrant's religion is the guiding force of his life, and that he used his debts for worldly possessions as an excuse for his lack of activity in his religion; that he had not made a serious study of his religion and his knowledge of his religion was superficial. The Hearing Officer recommended that the conscientious objector claim of the registrant be not sustained.

* * * [O]n September 15, 1964 the registrant executed a Current Information Questionnaire, which is in the registrant's file, indicating that he had never been married and was working for Local No. 2048, Corona, California. The resume shows, page 3, that a representative of Carpenter's Union, Local 2048 at Corona, advised that the registrant had been a member of that local since June 1963 and at the time of the interview, October 1965, the registrant was three months in

arrears in his dues and that it was his understanding that the registrant was recently married. He also stated that the registrant never associated with other members of the local who are Jehovah's Witnesses. The resume shows, page 8, that a representative of Corona Credit Bureau advised that in March 1964 the registrant was shown on their records with a wife. An overseer in the LaSierra Unit of Jehovah's Witnesses in Riverside, California, who had discussed the registrant's inactivity in his religion with him, advised on page 6 of the resume that he was unable to pinpoint the reason for the registrant's inactivity other than to consider it negligence on the registrant's part. Inconsistencies in the registrant's testimony and conduct, together with other indications, are believed to furnish an adequate basis in fact for the denial of the registrant's conscientious objector claim. * * *

The Department of Justice concludes that the registrant has failed to sustain his burden of proving his conscientious objector claim and recommends to your Board that the claim be not sustained and that he be not classified in Class I-O or in Class 1-A-O.

On March 23, 1967 the appeal board by a 3-0 vote classified petitioner 1-A (F. 14, 73) and petitioner was notified of this classification on March 31, 1967 (F. 14). On April 21, 1967 an order to report for induction on May 16, 1967 was mailed to petitioner (F. 15, 76). Petitioner reported as ordered, was found qualified for induction, but refused to submit to induction (F. 15, 77). In his own handwriting petitioner stated, "I will not go into the Army, because

it is against my personal beliefs, according to the Bibble [sic]" (F. 79).

ARGUMENT

The essence of petitioner's claim for conscientious objection status was that he was a Jehovah's Witness who adhered to that sect's opposition to war in any form. While that claim may have made out a *prima facie* showing, it was not conclusive since it is the applicant's subjective sincerity which is the ultimate question. Thus in *Olguin* v. *United States*, 392 F. 2d 329, 330-331 (C.A. 10), in which it was held that there was a basis in fact for defendant's I-A classification, the court stated:

> Appellant relies upon the fact that his initial registration contained a statement that he is a conscientious objector and his subsequent conscientious objector's questionnaire set out that he is a member of the Jehovah's Witnesses sect. A registrant cannot claim conscientious objector status as a matter of right simply because he produces certain objective matter—such as membership in a religious sect which advocates pacifism—which tends to support his claim [citing cases].

Similarly, in *Keefer* v. *United States*, 313 F. 2d 773, 776-777 (C.A. 9) where the denial of the defendant's claim for a 1-O classification was sustained, the court observed:

> The conscientious objector classification, a matter of legislative grace, is based upon the subjective religious beliefs of the particular individual, not upon the religious tenets of an organization

> of which he is a member. A registrant's mere assertion that he has the requisite subjective beliefs does not establish his right to the privilege. The Board was faced with the difficult task of determining whether appellant was sincere in his stated beliefs and any facts in the file which cast doubt on his veracity were relevant to this determination. * * *

The ultimate question for the Selective Service boards to decide here was petitioner's sincerity in objecting on religious grounds to participation in war in any form. Objective facts were relevant only insofar as they assisted in determining the purely subjective question of petitioner's sincerity. *Witmer* v. *United States*, 348 U.S. 375, 381-382; *United States* v. *Seeger*, 380 U.S. 163, 185.

Petitioner's Selective Service file contained sufficient objective facts concerning petitioner's personal sincerity, to provide a basis in fact for denying him the exemption. Cf. *Witmer* v. *United States*, 348 U.S. 375, 380-382. The Hearing Officer of the Department of Justice, who interviewed petitioner, found that petitioner did not appear to have made a serious study of his religion; that his knowledge of it was superficial; that he devoted less than 10 hours per month to his religious activities after July 1965; and that this and other information [3] warranted the conclusion that he showed a lack of religious fervor and that his religion

[3] This other information included inconsistencies as to whether petitioner was married or not, and that his claim concerning his dedication to religious activities was inconsistent with statements of others who had dealings with him (see *supra*, pp. 6-7).

was not the guiding force of his life (F. 59). Based upon his thorough examination of petitioner's testimony and conduct (F. 60) it was the conclusion of the hearing officer—adopted by Selective Service—that petitioner was not entitled to this exemption.

There is no substance to the claim (Pet. 11) that it was improper for the Hearing Officer to consider petitioner's limited—and at times nonexistent—participation in his sect's activities. The extent of petitioner's religious activity was a relevant factor to be considered in determining whether he was sincere in his religious beliefs—the alleged sincerity of which was the basis of his claim. See *e.g.*, *Imboden* v. *United States*, 194 F. 2d 508, 513 (C.A. 6), certiorari denied, 343 U.S. 957; cf. *Witmer* v. *United States*, *supra*, 348 U.S. at 383.[4] There was, in short, a basis in fact for refusal to grant the 1-O classification.[5]

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[4] This case accordingly does not involve the question of the availability of a conscientious objector classification to a registrant whose conscientious opposition to war in any form does not stem from "religious training and belief", an issue raised in several cases now pending upon petition for a writ of certiorari. See, *e.g.*, *Vaughn* v. *United States* No. 35 Misc., O.T. 1969; *Welsh* v. *United States*, No. 76, O.T. 1969.

[5] *Chernekoff* v. *United States*, 219 F. 2d 721, 724 (C.A. 9), relied upon by petitioner (Pet. 11-12), indicates that a registrant's claim to a 1-O classification cannot be denied solely because of sporadic criminal convictions for isolated deviations from the principles of his religion. There is nothing in *Chernekoff*, however, to show that a registrant is entitled to a 1-O classification by merely adhering to a certain religion, if from the totality of the objective circumstances a reasonable inference may be drawn that he is not sincere in his conscientious objector claim.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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